IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5825 OF 2004
IN
CRIMINAL APPEAL NO.1512 OF 2004

Bhikaji Vishnu Patil ...Applicant.

V/s

The State of Maharashtra ...Respondent.

Mr. S.A. Ingawale for the applicant.

Mr. A.S. Shitole APP for the respondent - State.

CORAM: V.M. KANADE, J.
DATE : 23rd December, 2004.

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant and the learned APP for the respondent - State.

2. This is an application filed by the original accused seeking suspension of the order of conviction and sentence passed by the learned Special Judge, Kolhapur in Special Case No.08/2002.

3. Appellant has been convicted for having committed an offence under section 7(13)(1)(d) of the Prevention of Corruption Act and sentenced to undergo R.I. for two years.

4. It is submitted by the learned Counsel appearing

on behalf of the applicant that prosecution case regarding the alleged demand of bribe was made by the applicant was doubtful because the subsidy was not received from the Government. It is submitted that the Trial Court also has observed that there is no evidence to show that the subsidy was received from the Government. He submitted that similarly there was a discrepancy in the statement of the complainant regarding acceptance of the amount of bribe. It is submitted that in the statement he has stated that the amount was handed over to the accused in front of Swaroop Plastic Shop. He further submitted that the complainant, in fact, had admitted in his cross-examination that the amount was given to the accused in hotel. He submitted that, therefore, the acceptance is also was not proved beyond the reasonable doubt by the prosecution.

5. The Apex Court in the case of K.C. Sareen Vs. CBI, Chandigarh reported in 2001 SCC (Cri) 1186 has also held that orinarily in a case where the accsued is convicted under the provisions of Prevention of Corruption Act, conviction and sentence should not be stayed. The Apex Court in its judgment has held that only in rarerest of the rare cases the conviction and sentence may be stayed. In view of the ratio laid

down by the judgment of the Apex Court, in my view, this is not a fit case for grant of stay to the conviction of sentence. The submissions made by the learned Counsel appearing on behalf of the applicant can be taken into consideration only at the final hearing of the appeal. Application is, therefore, rejected. Hearing of the appeal is expedited.

V.M. KANADE, J.